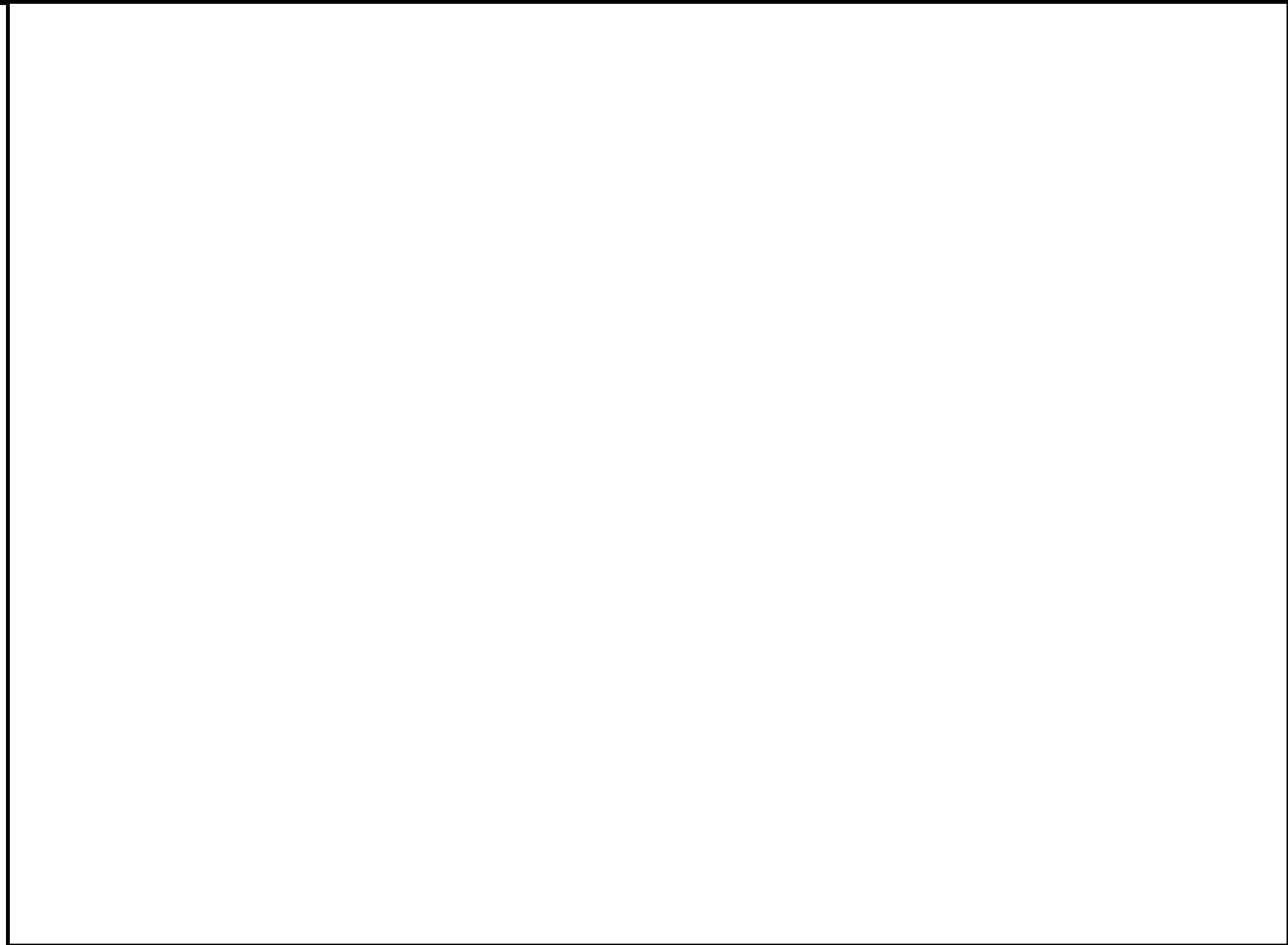


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SECRET

2 May 1950

Legal Staff



3. The facts of this case present an unusual question inasmuch as [redacted] mode of living in the area concerned, presumably over a reasonable period of time, does not coincide with the statutory or regulatory expectations. Concededly there are elements in [redacted] case which obviously were not within the contemplation of the statutes or regulations and yet, on the other hand, there are elements which obviously apply. Where the elements are present, the problem is not difficult. Where the elements are absent, however, a matter basically of administrative policy or determination appears to be involved. There are presented herein four hypothetical sets of facts which may serve to affect the various rights or benefits to which an employee stationed aboard is entitled:

a. While the vessel aboard which the employee is quartered is [redacted] and the employee is maintaining quarters ashore.

SECRET

SECRET

- b. While the vessel aboard which the employee is quartered is
and the employee is not maintaining quarters

- c. While the ship is on the high seas.

- d. While the ship is temporarily anchored at other foreign ports.

4. a. While the vessel aboard which the employee is quartered is an-
and the employee is maintaining quarters ashore.

(1) Quarters. It is clear that living quarters allowances are granted in those instances where quarters are not available or are not furnished. It is clear that so long as an officer or employee maintains and pays for his quarters at his post of assignment, he is entitled to the rates prescribed by the Standardized Allowance Regulations. (See Sec. 3.4 et seq SAR.)

(2) Cost of Living Allowance. Section 4.1 of the SAR defines post allowance as being a cost of living allowance granted to an officer or employee at his post abroad where the cost of living is proportionately so high that an allowance is necessary to enable the officer or employee to carry on his work efficiently. Section 4.2 of the same regulations provides as follows:

"4.2 Commencement of Grant.

The grant of a post allowance to an officer or employee assigned to a post shall commence on the date of his arrival at the post, the date of entrance on duty if he is appointed locally, or the date of assignment, whichever is the latest, except that, when the arrival of an officer or employee at a new post is delayed by reason of his being ordered to report at another place for consultation or temporary detail and his family arrives at the post before him, the grant shall commence on the date of the arrival of his family."

Section 4.4 a. of the SAR provides as follows:

"4.4 Continuance of Grant During Absence from Post.

- a. While an officer or employee remains within the country or countries of assignment (see secs. 1.5e and 9.1), and is in a pay status, unless terminated under sections 4.31 to 4.33,"

Since cost of living allowance is considered to be exclusive of quarters (including heat, fuel and light), and since from the assumed facts he is exposed to the cost of living of the area concerned substantially as much as any other civilian, officer, or employee in the area, there would

SECRET

SECRET

appear to be no legal objection to his being paid the applicable post allowances. There are elements involved which are suggestive of the appropriateness of considering [] under the assumed facts as an unclassified post. However, this is for administrative cognizance. 25X11A

(3) Post Differential. Sections 102, 103 and 104 of Executive Order 10000 provide as follows:

"Sec. 102. Additional Compensation by reason of environment. The Secretary of State shall from time to time, subject to applicable law, (a) designate places in foreign areas having conditions of environment which differ substantially from conditions of environment in the United States and warrant additional compensation as a recruitment incentive, (b) fix for each such place the additional rate or rates of compensation to be paid by reason of such environment pursuant to section 207 of the Act, after giving due consideration to the degree of environmental difference, and (c) prescribe such further regulations, governing such compensation, as may be necessary. Additional compensation so fixed is hereafter in this Part referred to as 'foreign post differential.'

"Sec. 103. Basis for foreign post differential. The Secretary of State may establish a foreign post differential for any place when, and only when, the place involves any one or more of the following: (a) extraordinarily difficult living conditions, (b) excessive physical hardship, or (c) notably unhealthy conditions.

"Sec. 104. Agencies covered. Subject to provisions of section 207 of the Act and of this Part, every executive department, independent establishment, and wholly owned Government corporation shall pay a foreign post differential fixed under section 102 hereof to each of its employees whose basic compensation is fixed by statute and who is located at the post for which that differential has been fixed."

Section 325.1 (g), Foreign Service Regulations, PART 325 ADDITIONAL COMPENSATION IN FOREIGN AREAS, defines the terms "on assignment" or "on transfer" as follows:

"(g) 'On assignment' or 'on transfer' at a post of duty means officially occupying a position located at the post, geographically and organizationally, and having official headquarters at the post for travel and other administrative purposes."

SECRET

SECRET

Section 325.2 of the same regulations, provides as follows:

"Section 325.2 Agencies covered. Subject to section 207 of the act, Part I of the Executive Order, and the regulations in this part, every executive department, independent establishment, and wholly owned Government corporation shall pay a foreign post differential fixed under § 325.11 to each of its civilian employees whose basic compensation is fixed by statute and who is located, on assignment, transfer, or detail, at the post for which that differential has been fixed."

Section 325.5 provides, in part, as follows:

"Section 325.5 Payment of foreign post differential. The following shall govern the payment of foreign post differential under the regulations in this part:

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(a) Payments shall begin as of the date of arrival at the post on assignment, transfer or detail, and shall stop as of the close of business on the date of departure from the post for separation, transfer, or detail, except that in the case of local recruitment such payments shall begin and stop as of the beginning and end of employment at the post."

Section 102 of Executive Order 10000 emphasizes the existence of an environmental difference as warranting additional compensation to serve as a recruitment incentive. It will be noted later in this memorandum that [] case is based on a theory which is inconsistent, in part, with the underlying theory of the post differential.

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Section 103 of the same order requires that the establishment of a foreign post differential be based on extraordinarily difficult living conditions, excessive physical hardships, or notably unhealthy conditions. It would appear to be a matter of administrative interest to consider whether the conditions existing at the post, having in mind [] mode of living, are inconsistent with the conditions which generate the post differential and thus warrant additional compensation as a recruitment incentive.

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Section 104 provides that every agency shall pay a foreign post differential to each of its employees whose basic compensation is fixed by statute and who is located at the post for which that differential has been fixed. This is commented upon below in connection with Section 325.2 of the Foreign Service Regulations.

Section 325.1 (g) of the Foreign Service Regulations states that the terms therein defined mean officially occupying a position located at the post geographically and organizationally, and having official headquarters at the post for travel and other purposes. Inasmuch

SECRET

25X1 as [] duties call for his being elsewhere for temporary duty for substantial periods of time, it appears appropriate for administrative consideration as to whether he, at all times, has the "geographical presence" contemplated by the regulations concerned.

Section 325.2 of the same regulations re-states Section 104 of Executive Order 10000, namely, that the post differential is payable to those civilian employees whose basic compensation is fixed by statute and who are located on assignment, transfer, or duty at post for which that differential has been fixed. It appears to be of further administrative interest to consider whether [] is "located at the post" as contemplated by the regulations. So long as his [] 25X1

25X1 [] is performing duties, an affirmative administrative determination would appear sufficient to entitle him to the post differential. In passing, it is noted that the official dispatch which initially raised the issue involved appears to stress the justification of the post differential on the basis of an economic argument rather than an environmental difference warranting additional compensation as a recruitment incentive.

25X1 b. While the vessel aboard which the employee is quartered is anchored at [] and the employee is not maintaining quarters ashore.

(1) Quarters. It is clear that the officers and employees are not entitled to any allowance where living quarters, including heat, fuel and light are furnished, in government-owned facilities.

(2) Cost of Living Allowance. The statements made in paragraph 4 a. (2) appear to be equally applicable here.

(3) Post Differential. The statements made in paragraph 4 a(3) hereof appear to be equally applicable with the notation that being quartered aboard the Flagship would appear to remove [] one more degree from "environmental conditions." We observe this as a matter of possible administrative interest. Its mere presence alone apparently would not afford a sufficient base for administrative decision. 25X1

c. While the ship is on the high seas.

(1) Quarters. So long as an officer or employee maintains and pays for his quarters at his post of assignment the grant continues while the officer or employee is temporarily absent under orders from the post. See Section 3.4 S.A.R.

(2) Cost of Living Allowance. Section 4.4 (a) and (b) of the S.A.R. provides as follows:

"4.4 Continuance of Grant During Absence from Post.

a. While an officer or employee remains within the country or countries of assignment (see secs.

SECRET

1.5e and 9.1), and is in a pay status, unless terminated under sections 4.31 to 4.33;

- "b. While an officer or employee with family is temporarily absent under orders from the country or countries of assignment and his family remains in the country of assignment.

Under the assumed facts, unless [] family remains in the country of assignment, there would appear to be no reason for the continuance of his cost of living allowance while absent from his post on temporary orders. 25X1

(3) Post Differential. On the assumption that an administrative determination has been made entitling [] to the post differential, it is provided in the regulations that payment shall begin as of the date of arrival at the post on assignment, transfer, or detail, and cease as of the close of business on the date of departure from the post for separation, transfer, or detail ... In this connection Section 325.1(h) of the Foreign Service Regulations, additional compensation in foreign areas defines "detail" as follows: 25X1

"(h) "On detail" at a post of duty means performing temporarily at a post other than the post of regular assignment, duties which involve carrying out functions of the post to which detailed. An employee is not "on detail" to a post if he is there temporarily, in a travel status, performing duties in connection with the duties of his regular position at another post."

(4) Per Diem. Paragraph 45 of the Standardized Government Travel Regulations as amended, provides that the rates of per diem in lieu of actual expense for subsistence authorized by law refers to its maximum allowable not the minimum. It is provided further that it is the responsibility of heads of departments and establishments to determine that travel orders authorize only such per diem as is justified by the nature of the travel. Care is required to prevent the fixing of a per diem rate in excess of that required to meet the necessary authorized expenses. It appears, therefore, that the employee is entitled to a reasonable per diem while the ship is away from its base, [] 25X1
This principle is confirmed in our own Administrative Instruction 30-1, paragraph 1.h.(1)

- d. While the ship is temporarily anchored at other foreign ports.

- (1) Quarters. (See preceding paragraphs.)
- (2) Cost of Living Allowance. (See preceding paragraphs.)

SECRET

SECRET

(3) Post Differential. The statements made in the preceding paragraphs appear to be equally applicable in the assumed instance. It is to be emphasized that where an administrative determination has been made as to the eligibility of the individual to the post differential, that payment of the post differential shall be continued during the period of temporary absence. (Administrative Instruction 30-1/1 paragraph 2 C(4)(a))

(4) Per Diem. The issue applicable here is the fixing of a per diem rate which is justified by the nature of the travel. It is agreed that when the Flagship is at other ports and the majority of the individual's duties involve liaison ashore, that the applicable per diem of the port station less 20% for quarters furnished is an acceptable standard.

You have also inquired as to whether the classification of [redacted] as a differential post is inclusive of [redacted]. You have noted that [redacted] has not been designated as a differential post although it is classified as a port of [redacted] under the Standardized Allowance Regulations. I have been advised by appropriate administrative channels of the Department of State that [redacted] is regarded as a part of and is included in [redacted]. Thus the assumption in your final paragraph is not only correct but confirmable by existing and available administrative precedents of the Department of State.

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Background file attached.

[redacted] hw
cc: Subject ✓
Chrono
Legal Decisions

*Memo Jan 6 - 1950 to Chief. CTD via Adso & 3 copies.
Official Dispatch 23 YA. 182*

SECRET